

By: Lucio, Ellis, Hinojosa, et al.

S.B. No. 60

Substitute the following for S.B. No. 60:

By: Keel

C.S.S.B. No. 60

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the representation of certain defendants in capital
3 cases and to the punishment for a capital felony or other felony
4 punishable by a term of imprisonment exceeding 99 years.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 12.31, Penal Code, is amended to read as
7 follows:

8 Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged
9 guilty of a capital felony in a case in which the state seeks the
10 death penalty shall be punished by imprisonment in the
11 institutional division for life without parole or by death. An
12 individual adjudged guilty of a capital felony in a case in which
13 the state does not seek the death penalty shall be punished by
14 imprisonment in the institutional division for life without parole.

15 (b) In a capital felony trial in which the state seeks the
16 death penalty, prospective jurors shall be informed that a sentence
17 of life imprisonment without parole or death is mandatory on
18 conviction of a capital felony. In a capital felony trial in which
19 the state does not seek the death penalty, prospective jurors shall
20 be informed that the state is not seeking the death penalty and that
21 a sentence of life imprisonment without parole is mandatory on
22 conviction of the capital felony.

23 SECTION 2. Section 12.32(a), Penal Code, is amended to read
24 as follows:

1 (a) An individual adjudged guilty of a felony of the first
2 degree shall be punished by imprisonment in the institutional
3 division for [~~life or for~~] any term of not more than 99 years or less
4 than 5 years.

5 SECTION 3. Sections 12.42(c) and (d), Penal Code, are
6 amended to read as follows:

7 (c)(1) Except as provided by Subdivision (2), if it is shown
8 on the trial of a first-degree felony that the defendant has been
9 once before convicted of a felony, on conviction he shall be
10 punished by imprisonment in the institutional division of the Texas
11 Department of Criminal Justice for [~~life, or for~~] any term of not
12 more than 99 years or less than 15 years. In addition to
13 imprisonment, an individual may be punished by a fine not to exceed
14 \$10,000.

15 (2) A defendant shall be punished by imprisonment in
16 the institutional division for a term of 99 years [~~life~~] if:

17 (A) the defendant is convicted of an offense:

18 (i) under Section 22.021 or 22.011, Penal
19 Code;

20 (ii) under Section 20.04(a)(4), Penal Code,
21 if the defendant committed the offense with the intent to violate or
22 abuse the victim sexually; or

23 (iii) under Section 30.02, Penal Code,
24 punishable under Subsection (d) of that section, if the defendant
25 committed the offense with the intent to commit a felony described
26 by Subparagraph (i) or (ii) or a felony under Section 21.11 or
27 22.011, Penal Code; and

1 (B) the defendant has been previously convicted
2 of an offense:

3 (i) under Section 43.25 or 43.26, Penal
4 Code, or an offense under Section 43.23, Penal Code, punishable
5 under Subsection (h) of that section;

6 (ii) under Section 21.11, 22.011, 22.021,
7 or 25.02, Penal Code;

8 (iii) under Section 20.04(a)(4), Penal
9 Code, if the defendant committed the offense with the intent to
10 violate or abuse the victim sexually;

11 (iv) under Section 30.02, Penal Code,
12 punishable under Subsection (d) of that section, if the defendant
13 committed the offense with the intent to commit a felony described
14 by Subparagraph (ii) or (iii); or

15 (v) under the laws of another state
16 containing elements that are substantially similar to the elements
17 of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

18 (d) If it is shown on the trial of a felony offense other
19 than a state jail felony punishable under Section 12.35(a) that the
20 defendant has previously been finally convicted of two felony
21 offenses, and the second previous felony conviction is for an
22 offense that occurred subsequent to the first previous conviction
23 having become final, on conviction he shall be punished by
24 imprisonment in the institutional division of the Texas Department
25 of Criminal Justice for [~~life, or for~~] any term of not more than 99
26 years or less than 25 years.

27 SECTION 4. Section 508.046, Government Code, is amended to

1 read as follows:

2 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
3 parole an inmate who was convicted of [~~a capital felony or~~] an
4 offense under Section 21.11(a)(1) or 22.021, Penal Code, or who is
5 required under Section 508.145(c) to serve 35 calendar years before
6 becoming eligible for release on parole, all members of the board
7 must vote on the release on parole of the inmate, and at least
8 two-thirds of the members must vote in favor of the release on
9 parole. A member of the board may not vote on the release unless the
10 member first receives a copy of a written report from the department
11 on the probability that the inmate would commit an offense after
12 being released on parole.

13 SECTION 5. Sections 508.145(a) and (c), Government Code,
14 are amended to read as follows:

15 (a) An inmate under sentence of death or serving a sentence
16 of life imprisonment without parole is not eligible for release on
17 parole.

18 (c) An inmate serving a [~~life~~] sentence under Section
19 12.42(c)(2), Penal Code, is not eligible for release on parole
20 until the actual calendar time the inmate has served, without
21 consideration of good conduct time, equals 35 calendar years.

22 SECTION 6. Section 1, Article 37.071, Code of Criminal
23 Procedure, is amended to read as follows:

24 Sec. 1. If a defendant is found guilty in a capital felony
25 case in which the state does not seek the death penalty, the judge
26 shall sentence the defendant to life imprisonment without parole.

27 SECTION 7. Section 2(a)(1), Article 37.071, Code of

1 Criminal Procedure, is amended to read as follows:

2 (1) If a defendant is tried for a capital offense in
3 which the state seeks the death penalty, on a finding that the
4 defendant is guilty of a capital offense, the court shall conduct a
5 separate sentencing proceeding to determine whether the defendant
6 shall be sentenced to death or life imprisonment without parole.
7 The proceeding shall be conducted in the trial court and, except as
8 provided by Article 44.29(c) of this code, before the trial jury as
9 soon as practicable. In the proceeding, evidence may be presented
10 by the state and the defendant or the defendant's counsel as to any
11 matter that the court deems relevant to sentence, including
12 evidence of the defendant's background or character or the
13 circumstances of the offense that mitigates against the imposition
14 of the death penalty. This subdivision shall not be construed to
15 authorize the introduction of any evidence secured in violation of
16 the Constitution of the United States or of the State of Texas. The
17 state and the defendant or the defendant's counsel shall be
18 permitted to present argument for or against sentence of death. The
19 court, the attorney representing the state, the defendant, or the
20 defendant's counsel may not inform a juror or a prospective juror of
21 the effect of a failure of a jury to agree on issues submitted under
22 Subsection (c) or (e) [~~of this article~~].

23 SECTION 8. Section 2(e), Article 37.071, Code of Criminal
24 Procedure, is amended to read as follows:

25 (e)(1) The court shall instruct the jury that if the jury
26 returns an affirmative finding to each issue submitted under
27 Subsection (b) [~~of this article~~], it shall answer the following

1 issue:

2 Whether, taking into consideration all of the evidence,
3 including the circumstances of the offense, the defendant's
4 character and background, and the personal moral culpability of the
5 defendant, there is a sufficient mitigating circumstance or
6 circumstances to warrant that a sentence of life imprisonment
7 without parole rather than a death sentence be imposed.

8 (2) The court [~~, on the written request of the attorney~~
9 ~~representing the defendant,~~] shall:

10 (A) instruct the jury that if the jury answers
11 that a circumstance or circumstances warrant that a sentence of
12 life imprisonment without parole rather than a death sentence be
13 imposed, the court will sentence the defendant to imprisonment in
14 the institutional division of the Texas Department of Criminal
15 Justice for life without parole; and

16 (B) charge the jury that a defendant sentenced to
17 confinement for life without parole under this article is
18 ineligible for release from the department on parole. [~~in writing~~
19 ~~as follows:~~

20 [~~"Under the law applicable in this case, if the defendant is~~
21 ~~sentenced to imprisonment in the institutional division of the~~
22 ~~Texas Department of Criminal Justice for life, the defendant will~~
23 ~~become eligible for release on parole, but not until the actual time~~
24 ~~served by the defendant equals 40 years, without consideration of~~
25 ~~any good conduct time. It cannot accurately be predicted how the~~
26 ~~parole laws might be applied to this defendant if the defendant is~~
27 ~~sentenced to a term of imprisonment for life because the~~

1 ~~application of those laws will depend on decisions made by prison~~
2 ~~and parole authorities, but eligibility for parole does not~~
3 ~~guarantee that parole will be granted."]~~

4 SECTION 9. Section 2(g), Article 37.071, Code of Criminal
5 Procedure, is amended to read as follows:

6 (g) If the jury returns an affirmative finding on each issue
7 submitted under Subsection (b) [~~of this article~~] and a negative
8 finding on an issue submitted under Subsection (e)(1) [~~of this~~
9 ~~article~~], the court shall sentence the defendant to death. If the
10 jury returns a negative finding on any issue submitted under
11 Subsection (b) [~~of this article~~] or an affirmative finding on an
12 issue submitted under Subsection (e)(1) [~~of this article~~] or is
13 unable to answer any issue submitted under Subsection (b) or (e) [~~of~~
14 ~~this article~~], the court shall sentence the defendant to
15 confinement in the institutional division of the Texas Department
16 of Criminal Justice for life imprisonment without parole.

17 SECTION 10. Articles 44.251(a) and (b), Code of Criminal
18 Procedure, are amended to read as follows:

19 (a) The court of criminal appeals shall reform a sentence of
20 death to a sentence of confinement in the institutional division of
21 the Texas Department of Criminal Justice for life without parole if
22 the court finds that there is insufficient evidence to support an
23 affirmative answer to an issue submitted to the jury under Section
24 2(b), Article 37.071, [~~or Section 3(b), Article 37.0711,~~] of this
25 code or a negative answer to an issue submitted to a jury under
26 Section 2(e)(1), Article 37.071, [~~or Section 3(e), Article~~
27 ~~37.0711,~~] of this code.

1 (b) The court of criminal appeals shall reform a sentence of
2 death to a sentence of confinement in the institutional division of
3 the Texas Department of Criminal Justice for life without parole
4 if:

5 (1) the court finds reversible error that affects the
6 punishment stage of the trial other than a finding of insufficient
7 evidence under Subsection (a) of this article; and

8 (2) within 30 days after the date on which the opinion
9 is handed down, the date the court disposes of a timely request for
10 rehearing, or the date that the United States Supreme Court
11 disposes of a timely filed petition for writ of certiorari,
12 whichever date is later, the prosecuting attorney files a motion
13 requesting that the sentence be reformed to confinement for life
14 without parole.

15 SECTION 11. Chapter 44, Code of Criminal Procedure, is
16 amended by adding Article 44.2511 to read as follows:

17 Art. 44.2511. REFORMATION OF SENTENCE IN CAPITAL CASE FOR
18 OFFENSE COMMITTED BEFORE SEPTEMBER 1, 1991. (a) This article
19 applies to the reformation of a sentence of death in a capital case
20 for an offense committed before September 1, 1991. For purposes of
21 this subsection, an offense is committed before September 1, 1991,
22 if every element of the offense occurred before that date.

23 (b) The court of criminal appeals shall reform a sentence of
24 death to a sentence of confinement in the institutional division of
25 the Texas Department of Criminal Justice for life if the court finds
26 that there is insufficient evidence to support an affirmative
27 answer to an issue submitted to the jury under Section 3(b), Article

1 37.0711, of this code or a negative answer to an issue submitted to
2 a jury under Section 3(e), Article 37.0711, of this code.

3 (c) The court of criminal appeals shall reform a sentence of
4 death to a sentence of confinement in the institutional division of
5 the Texas Department of Criminal Justice for life if:

6 (1) the court finds reversible error that affects the
7 punishment stage of the trial other than a finding of insufficient
8 evidence under Subsection (b) of this article; and

9 (2) within 30 days after the date on which the opinion
10 is handed down, the date the court disposes of a timely request for
11 rehearing, or the date that the United States Supreme Court
12 disposes of a timely filed petition for writ of certiorari,
13 whichever date is later, the prosecuting attorney files a motion
14 requesting that the sentence be reformed to confinement for life.

15 (d) If the court of criminal appeals finds reversible error
16 that affects the punishment stage of the trial only, as described by
17 Subsection (c) of this article, and the prosecuting attorney does
18 not file a motion for reformation of sentence in the period
19 described by that subsection, the defendant shall receive a new
20 sentencing trial in the manner required by Article 44.29(c) of this
21 code.

22 SECTION 12. Article 44.29(c), Code of Criminal Procedure,
23 is amended to read as follows:

24 (c) If any court sets aside or invalidates the sentence of a
25 defendant convicted of an offense under Section 19.03, Penal Code,
26 [~~and sentenced to death~~] on the basis of any error affecting
27 punishment only, the court shall not set the conviction aside but

1 rather shall commence a new punishment hearing under Article 37.071
2 or Article 37.0711 of this code, as appropriate, as if a finding of
3 guilt had been returned. The court shall empanel a jury for the
4 sentencing stage of the trial in the same manner as a jury is to be
5 empaneled by the court in other trials before the court for offenses
6 under Section 19.03, Penal Code. At the new punishment hearing, the
7 court shall permit both the state and the defendant to introduce
8 evidence as permitted by Article 37.071 or Article 37.0711 of this
9 code.

10 SECTION 13. Sections 481.112(e) and (f), Health and Safety
11 Code, are amended to read as follows:

12 (e) An offense under Subsection (a) is punishable by
13 imprisonment in the institutional division of the Texas Department
14 of Criminal Justice for [~~life or for~~] a term of not more than 99
15 years or less than 10 years, and a fine not to exceed \$100,000, if
16 the amount of the controlled substance to which the offense applies
17 is, by aggregate weight, including adulterants or dilutants, 200
18 grams or more but less than 400 grams.

19 (f) An offense under Subsection (a) is punishable by
20 imprisonment in the institutional division of the Texas Department
21 of Criminal Justice for [~~life or for~~] a term of not more than 99
22 years or less than 15 years, and a fine not to exceed \$250,000, if
23 the amount of the controlled substance to which the offense applies
24 is, by aggregate weight, including adulterants or dilutants, 400
25 grams or more.

26 SECTION 14. Section 481.1121(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) An offense under this section is:

2 (1) a state jail felony if the number of abuse units of
3 the controlled substance is fewer than 20;

4 (2) a felony of the second degree if the number of
5 abuse units of the controlled substance is 20 or more but fewer than
6 80;

7 (3) a felony of the first degree if the number of abuse
8 units of the controlled substance is 80 or more but fewer than
9 4,000; and

10 (4) punishable by imprisonment in the institutional
11 division of the Texas Department of Criminal Justice for [~~life or~~
12 ~~for~~] a term of not more than 99 years or less than 15 years and a
13 fine not to exceed \$250,000, if the number of abuse units of the
14 controlled substance is 4,000 or more.

15 SECTION 15. Section 481.113(e), Health and Safety Code, is
16 amended to read as follows:

17 (e) An offense under Subsection (a) is punishable by
18 imprisonment in the institutional division of the Texas Department
19 of Criminal Justice for [~~life or for~~] a term of not more than 99
20 years or less than 10 years, and a fine not to exceed \$100,000, if
21 the amount of the controlled substance to which the offense applies
22 is, by aggregate weight, including adulterants or dilutants, 400
23 grams or more.

24 SECTION 16. Section 481.114(e), Health and Safety Code, is
25 amended to read as follows:

26 (e) An offense under Subsection (a) is punishable by
27 imprisonment in the institutional division of the Texas Department

1 of Criminal Justice for [~~life or for~~] a term of not more than 99
2 years or less than 10 years, and a fine not to exceed \$100,000, if
3 the amount of the controlled substance to which the offense applies
4 is, by aggregate weight, including any adulterants or dilutants,
5 400 grams or more.

6 SECTION 17. Section 481.115(f), Health and Safety Code, is
7 amended to read as follows:

8 (f) An offense under Subsection (a) is punishable by
9 imprisonment in the institutional division of the Texas Department
10 of Criminal Justice for [~~life or for~~] a term of not more than 99
11 years or less than 10 years, and a fine not to exceed \$100,000, if
12 the amount of the controlled substance possessed is, by aggregate
13 weight, including adulterants or dilutants, 400 grams or more.

14 SECTION 18. Section 481.1151(b), Health and Safety Code, is
15 amended to read as follows:

16 (b) An offense under this section is:

17 (1) a state jail felony if the number of abuse units of
18 the controlled substance is fewer than 20;

19 (2) a felony of the third degree if the number of abuse
20 units of the controlled substance is 20 or more but fewer than 80;

21 (3) a felony of the second degree if the number of
22 abuse units of the controlled substance is 80 or more but fewer than
23 4,000;

24 (4) a felony of the first degree if the number of abuse
25 units of the controlled substance is 4,000 or more but fewer than
26 8,000; and

27 (5) punishable by imprisonment in the institutional

1 division of the Texas Department of Criminal Justice for [~~life or~~
2 ~~for~~] a term of not more than 99 years or less than 15 years and a
3 fine not to exceed \$250,000, if the number of abuse units of the
4 controlled substance is 8,000 or more.

5 SECTION 19. Section 481.116(e), Health and Safety Code, is
6 amended to read as follows:

7 (e) An offense under Subsection (a) is punishable by
8 imprisonment in the institutional division of the Texas Department
9 of Criminal Justice for [~~life or for~~] a term of not more than 99
10 years or less than five years, and a fine not to exceed \$50,000, if
11 the amount of the controlled substance possessed is, by aggregate
12 weight, including adulterants or dilutants, 400 grams or more.

13 SECTION 20. Section 481.117(e), Health and Safety Code, is
14 amended to read as follows:

15 (e) An offense under Subsection (a) is punishable by
16 imprisonment in the institutional division of the Texas Department
17 of Criminal Justice for [~~life or for~~] a term of not more than 99
18 years or less than five years, and a fine not to exceed \$50,000, if
19 the amount of the controlled substance possessed is, by aggregate
20 weight, including adulterants or dilutants, 400 grams or more.

21 SECTION 21. Section 481.118(e), Health and Safety Code, is
22 amended to read as follows:

23 (e) An offense under Subsection (a) is punishable by
24 imprisonment in the institutional division of the Texas Department
25 of Criminal Justice for [~~life or for~~] a term of not more than 99
26 years or less than five years, and a fine not to exceed \$50,000, if
27 the amount of the controlled substance possessed is, by aggregate

1 weight, including adulterants or dilutants, 400 grams or more.

2 SECTION 22. Section 481.120(b), Health and Safety Code, is
3 amended to read as follows:

4 (b) An offense under Subsection (a) is:

5 (1) a Class B misdemeanor if the amount of marihuana
6 delivered is one-fourth ounce or less and the person committing the
7 offense does not receive remuneration for the marihuana;

8 (2) a Class A misdemeanor if the amount of marihuana
9 delivered is one-fourth ounce or less and the person committing the
10 offense receives remuneration for the marihuana;

11 (3) a state jail felony if the amount of marihuana
12 delivered is five pounds or less but more than one-fourth ounce;

13 (4) a felony of the second degree if the amount of
14 marihuana delivered is 50 pounds or less but more than five pounds;

15 (5) a felony of the first degree if the amount of
16 marihuana delivered is 2,000 pounds or less but more than 50 pounds;
17 and

18 (6) punishable by imprisonment in the institutional
19 division of the Texas Department of Criminal Justice for [~~life or~~
20 ~~for~~] a term of not more than 99 years or less than 10 years, and a
21 fine not to exceed \$100,000, if the amount of marihuana delivered is
22 more than 2,000 pounds.

23 SECTION 23. Section 508.145(b), Government Code, is
24 repealed.

25 SECTION 24. Section 2(d), Article 11.071, Code of Criminal
26 Procedure, is amended to read as follows:

27 (d) The court of criminal appeals shall adopt rules for the

1 appointment of attorneys as counsel under this section and the
2 convicting court may appoint an attorney as counsel under this
3 section only if the appointment is approved by the court of criminal
4 appeals in any manner provided by those rules. The rules must
5 require that an attorney appointed as lead counsel under this
6 section not have been found by a federal or state court to have
7 rendered ineffective assistance of counsel during the trial or
8 appeal of any criminal case.

9 SECTION 25. Article 26.052(d), Code of Criminal Procedure,
10 is amended to read as follows:

11 (d)(1) The committee shall adopt standards for the
12 qualification of attorneys to be appointed to represent indigent
13 defendants in capital cases in which the death penalty is sought.

14 (2) The standards must require that a trial [~~an~~]
15 attorney appointed as lead counsel to a death penalty case:

16 (A) be a member of the State Bar of Texas;

17 (B) exhibit proficiency and commitment to
18 providing quality representation to defendants in death penalty
19 cases;

20 (C) have not been found by a federal or state
21 court to have rendered ineffective assistance of counsel during the
22 trial or appeal of any criminal case;

23 (D) have at least five years of experience in
24 criminal litigation;

25 (E) [~~(D)~~] have tried to a verdict as lead defense
26 counsel a significant number of felony cases, including homicide
27 trials and other trials for offenses punishable as second or first

1 degree felonies or capital felonies;

2 (F) [~~(E)~~] have trial experience in:

3 (i) the use of and challenges to mental
4 health or forensic expert witnesses; and

5 (ii) investigating and presenting
6 mitigating evidence at the penalty phase of a death penalty trial;
7 and

8 (G) [~~(F)~~] have participated in continuing legal
9 education courses or other training relating to criminal defense in
10 death penalty cases.

11 (3) The standards must require that an attorney
12 appointed as lead appellate counsel in the direct appeal of a death
13 penalty case have not been found by a federal or state court to have
14 rendered ineffective assistance of counsel during the trial or
15 appeal of any criminal case.

16 (4) The committee shall prominently post the standards
17 in each district clerk's office in the region with a list of
18 attorneys qualified for appointment.

19 (5) [~~(4)~~] Not later than the second anniversary of the
20 date an attorney is placed on the list of attorneys qualified for
21 appointment in death penalty cases and each year following the
22 second anniversary, the attorney must present proof to the
23 committee that the attorney has successfully completed the minimum
24 continuing legal education requirements of the State Bar of Texas,
25 including a course or other form of training relating to the defense
26 of death penalty cases. The committee shall remove the attorney's
27 name from the list of qualified attorneys if the attorney fails to

1 provide the committee with proof of completion of the continuing
2 legal education requirements.

3 SECTION 26. The court of criminal appeals shall amend rules
4 adopted under Section 2(d), Article 11.071, Code of Criminal
5 Procedure, as necessary to comply with that section, as amended by
6 this Act, not later than January 1, 2006.

7 SECTION 27. A local selection committee shall amend
8 standards previously adopted by the committee to conform with the
9 requirements of Article 26.052(d), Code of Criminal Procedure, as
10 amended by this Act, not later than the 75th day after the effective
11 date of this Act. An attorney appointed to a death penalty case on
12 or after the 75th day after the effective date of this Act must meet
13 the standards adopted in conformity with the amended Article
14 26.052(d). An attorney appointed to a death penalty case before the
15 75th day after the effective date of this Act is covered by the law
16 in effect when the attorney was appointed, and the former law is
17 continued in effect for that purpose.

18 SECTION 28. (a) The change in law made by this Act applies
19 only to an offense committed on or after the effective date of this
20 Act. For purposes of this section, an offense is committed before
21 the effective date of this Act if any element of the offense occurs
22 before the effective date.

23 (b) An offense committed before the effective date of this
24 Act is covered by the law in effect when the offense was committed,
25 and the former law is continued in effect for that purpose.

26 SECTION 29. This Act takes effect September 1, 2005.